301 NLRB No. 129

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D--1800
Newton, MA

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SPRAY-ON SYSTEMS, INC.,
AND ITS ALTER EGO RAND
LEASING COMPANY

and

Cases 1--CA--26852 and
1--CA--27159

MASSACHUSETTS LABORERS' DISTRICT
COUNCIL, a/w LABORERS' INTERNATIONAL
UNION OF NORTH AMERICA, AFL--CIO

DECISION AND ORDER

By Members Devaney, Oviatt, and Raudabaugh

On January 5, 1990, the General Counsel of the National Labor Relations Board issued a complaint against Spray-On and Rand, the Respondent, and issued a second complaint and order consolidating cases on June 1, 1990. The complaints allege that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act.

On June 8, 1990, the Respondent filed an answer admitting in part and denying in part the allegations in the complaints. On October 12, 1990, the Respondent filed an amended answer to the consolidated complaints, admitting all allegations.[1]

On November 8, 1990, the General Counsel filed a Motion for Summary Judgment. On November 9, 1990, the Board issued an order transferring the

[1] On that date, Respondent's president, Charles W. Scott, sent a letter to the Board's Region 1 Office which referred to Cases 1--CA--26852 and 1--CA--27159. In the letter Scott admitted all ''the allegations 1 through 17 as set forth by the National Labor Relations Board in the complaint.'' The letter also stated that Scott understood that the General Counsel would file a Motion for Summary Judgment as a result of his amended answer and that Scott had no objection.

proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Company filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

By its October 12, 1990 amended answer the Respondent admitted all the allegations in the consolidated complaints. Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent, two corporations with a shared office and place of business in Newton, Massachusetts, and places of business at various jobsites in Massachusetts, has been engaged as a contractor in the construction industry. During the calendar year ending December 31, 1989, in the course and conduct of its business operations, the Respondent provided services valued in excess of $50,000 for enterprises within the Commonwealth of Massachusetts, directly engaged in interstate commerce.

In 1986, Respondent Rand Leasing Company was established by Respondent Spray-On Systems, Inc. About January 1990, Rand Leasing Company began to operate as a subordinate instrument to and a disguised continuation of Spray-On Systems, Inc. About March 1990, Respondent Spray-On Systems, Inc., transferred Rand Leasing Company to an office in Rosindale, Massachusetts. Spray-On Systems, Inc., and Rand Leasing Company are, and have been at all times material, alter egos and a single employer within the meaning of the Act.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of the Act:

> All laborers employed by members of the Associations and of the employers who have authorized said Associations to bargain on their behalf, including Respondent, but excluding guards and supervisors as defined in the Act.

At all material times the Union has been the designated collective-bargaining representative of the employees in the unit and has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement, effective from June 1, 1988, through May 31, 1991.[2] By virtue of Section 9(a) of the Act, the Union is the exclusive representative of the employees in the bargaining unit for the purposes of collective bargaining concerning rates of pay, wages, hours of employment, and other terms and conditions of employment.

About and since June 1989, and January 1990, the Respondent has subcontracted the work previously performed by employees employed in the above-described unit. The Respondent has done so without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain about such subcontracting and the effects of same. Also since about July 20, 1989, and January 1990, the Respondent has failed and refused to pay

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[2] The Respondent, by virtue of its entering into an ''Acceptance of Agreement and Declarations of Trust'' has bound itself to the 1988--1991 collective-bargaining agreement between the Associated General Contractors of Massachusetts, Inc. and the Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc., jointly called the Associations, and the Union.

the wage rates and fringe benefit amounts which have become due as of, and since, July 20, 1989, under articles XI, XII, XIII, XIV, and XV of the agreement.

By these acts and conduct, the Respondent has engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Conclusions of Law

By failing to meet and bargain with the Union regarding the subcontracting of bargaining unit work and the effects of that subcontracting; by failing to comply with the 1988--1991 collective-bargaining agreement; by failing to remit contributions to various fringe benefit funds as required by the collective-bargaining agreement; and by failing to make employees whole for all moneys lost as a result of the Respondent's failure to pay the contractual wage rate, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to meet and bargain with the Union as the exclusive representative of its employees with regard to its subcontracting of bargaining unit work and the effects of that subcontracting. We also shall order the Respondent to make its employees whole for all moneys and benefits lost as a result of the Respondent's failure to bargain over the subcontracting of unit work and the effects of that subcontracting. Additionally, we shall order the Respondent to comply with the 1988--1991

collective-bargaining agreement by remitting contributions to various fringe benefit funds as provided for in the collective-bargaining agreement [3] and we shall order the Respondent to make the unit employees whole for all moneys lost as a result of its failure to pay the contractual wage rate. We also shall order the Respondent to reimburse the unit employees for any expenses ensuing from its failure to make those payments, as set forth in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with interest as computed in New Horizons for the Retarded, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Spray-On Systems, Inc., and its alter ego Rand Leasing Company, Newton, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with Massachusetts Laborers' District Council, a/w Laborers' International Union of North America, AFL--CIO, regarding subcontracting unit work; by not bargaining over the effects subcontracting; by failing to pay contractual wage rates; and by failing to remit contributions to various fringe benefit funds as provided for in the collective-bargaining agreement.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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[3] Because the provisions of employee benefit fund agreements are variable and complex, we leave to the compliance stage the question of whether the Respondent must pay any additional amounts into the benefit funds in order to satisfy our ''make whole'' remedy. Merryweather Optical Co., 240 NLRB 1213 (1979).

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Meet and, on request, bargain with the Union as the exclusive representative of its unit employees with regard to the subcontracting of bargaining unit work and the effects of that subcontracting and make employees whole for all moneys and benefits lost as a result of the Respondent's failure to bargain over that subcontracting, as set forth in the remedy section of this decision. The unit is:

> All laborers employed by members of the Associations and of the employers who have authorized said Associations to bargain on their behalf, including Respondent, but excluding guards and supervisors as defined in the Act.

(b) Comply with the 1988--1991 collective-bargaining agreement in effect between the Respondent and the Union by remitting contributions to various fringe benefit funds as provided in the agreement and make unit employees whole for all moneys lost as a result of its failure to pay the contractual wage rate.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of payments due under the terms of this Order.

(d) Post at its facility in Newton, Massachusetts, copies of the attached notice marked ''Appendix.''[4] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon

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[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. February 27, 1991

Dennis M. Devaney, Member

Clifford R. Oviatt, Jr., Member

John N. Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain in good faith with the Massachusetts Laborers' District Council, a/w Laborers' International Union of North America, AFL--CIO, regarding subcontracting unit work and by not bargaining over its effects; by failing to pay the contractual wage rate, and by failing to remit contributions to various fringe benefit funds as required in the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL meet and bargain with the Union about the subcontracting of bargaining unit work and the effects of that subcontracting and WE WILL make unit employees whole for all moneys and benefits lost as a result of our failure to bargain over the subcontracting of unit work. The unit is:

> All laborers employed by members of the Associations and of the employers who have authorized said Associations to bargain on their behalf, including the Employer, but excluding guards and supervisors as defined in the Act.

WE WILL comply with the 1988--1991 collective-bargaining agreement with the Union and remit all contributions to various fringe benefit funds as

provided for in the agreement and WE WILL make employees whole for all moneys lost as a result of our failure to pay the contractual wage rate.

SPRAY-ON SYSTEMS, INC.
AND ITS ALTER EGO RAND
LEASING COMPANY

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 10 Causeway Street, Sixth Floor, Boston, Massachusetts 02222-1072, Telephone 617--565--6739.